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Before the **Mar 29 10 51 AM '04**  
**Federal Communications Commission**  
**Washington, D.C. 20554**

In the Matter of )

)  
 Assessment and Collection  
 of Regulatory Fees for  
 Fiscal Year 2004 )

MD Docket No. 04-73

**NOTICE OF PROPOSED RULE MAKING****Adopted: March 17, 2004****Released: March 29, 2004****Comment Date: April 21, 2004****Reply Comment Date: April 30, 2004****By the Commission:****TABLE OF CONTENTS**

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## I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking*, we propose to collect \$272,958,000 in regulatory fees for Fiscal Year (FY) 2004. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.<sup>1</sup>

## II. DISCUSSION

### A. Development of FY 2004 Fees

#### 1. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).<sup>2</sup> For FY 2004, this allocation was done using FY 2003 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 1.5 percent to reflect the increase in regulatory fees from FY 2003 to FY 2004. These FY 2004 amounts were then divided by the number of payment units in each fee category to determine the unit fee.<sup>3</sup> In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in

<sup>1</sup> 47 U.S.C. § 159(a).

<sup>2</sup> The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of approximately 1.5 percent in FY 2004 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 1.5 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

<sup>3</sup> In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

accordance with 47 U.S.C. §159(b)(2).

## 2. Additional Adjustments to Payment Units

3. In calculating the FY 2004 regulatory fees proposed in Attachment D, we further adjusted the FY 2003 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.<sup>4</sup> Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2004, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, for example, when we note that our estimated FY 2004 payment units are based on FY 2003 actual payment units, we do not necessarily imply that our FY 2004 projection is exactly the same number as in FY 2003, but that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

4. With regards to regulatory fees for AM and FM radio stations, additional factors are considered in determining the fees paid by these stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

## 3. Local Multipoint Distribution Service (LMDS)

5. In both 2001,<sup>5</sup> and in 2002,<sup>6</sup> the Commission denied requests to move the Local Multipoint Distribution Service (LMDS) from the Multipoint Distribution Service (MDS) fee category to the microwave fee category. In our *FY 2003 Notice of Proposed Rulemaking*,<sup>7</sup> we sought comment on the appropriate fee classification of LMDS. Parties commenting on this issue suggested that LMDS be classified in the microwave fee category because LMDS was more similar to services in the microwave fee category than MDS.<sup>8</sup> We noted certain distinctions between MDS and LMDS, and we declined to place

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<sup>4</sup> The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. For additional information on source material, see Attachment B.

<sup>5</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Report and Order*, 16 FCC Rcd 13525 (2001).

<sup>6</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Memorandum Opinion and Order*, 17 FCC Rcd 24920 (2002).

<sup>7</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 18 FCC Rcd 6088-89 ¶¶ 6-9 (2003) (*FY 2003 Notice of Proposed Rulemaking*).

<sup>8</sup> The Commission recently initiated a proceeding to facilitate the provision of high-speed mobile and fixed broadband and other advanced wireless services and to consider the possibility of merging MDS and the Instructional Television Fixed Service (ITFS) into a single Broadband Communications Service. See Amendment of Parts 1, 21, 73, 74 And (continued....)

LMDS in the microwave fee category because recent technological developments and emerging commercial applications suggested that LMDS may develop on a different track than other microwave services.<sup>9</sup> To better track the development of LMDS, therefore, we created a separate LMDS fee category.<sup>10</sup> We note that we still have under advisement a broader proceeding that addresses the policies and fee structures governing LMDS and other wireless services. Therefore, we again seek comment on the appropriate fee classification of LMDS.

#### **B. Commercial Mobile Radio Service (CMRS) Messaging**

6. In our *FY 2003 Report & Order*,<sup>11</sup> we noted that there has been a significant decline in CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent. In fact, in the FY 2003 regulatory fee cycle, the number of CMRS Messaging units that paid regulatory fees declined to less than 16 million. This is consistent with our *Eighth Annual CMRS Competition Report*, which estimates the number of paging-only subscribers at the end of 2002 to be 14.1 million units.<sup>12</sup> In addition, between the FY 2003 and FY 2004 regulatory fee cycle, there were no significant changes in the level of regulatory oversight for this fee category. Therefore, for the reasons outlined in our *FY 2003 Report and Order*<sup>13</sup>, and because the level of regulatory oversight remained relatively the same between FY 2003 and FY 2004, we propose to maintain the CMRS Messaging subscriber regulatory fee rate at the FY 2003 level to avoid further contributing to the financial hardships associated with a declining subscriber base.

#### **C. Proposed Procedural Changes for Notification, Assessment and Collection of Regulatory Fees**

7. As was the case last year, we again propose that we will not disseminate public notices to regulatees through surface mail informing them of when regulatory fees are due. With the widespread use of the Internet, we believe we can better serve the public by providing the necessary information on its website. To that end, we propose to provide public notices, fact sheets and all necessary regulatory fee payment procedure information on our website at <http://www.fcc.gov/fees> as we have for the past several years. In the event that regulatees do not have access to the Internet, hardcopies of public notices and other relevant materials will be mailed upon request to anyone who contacts the FCC Consumer Center at (888) 225-5322. We also will continue to publish official notice of regulatory fee assessments in the *Federal Register*.

8. While we propose to make general regulatory fee information available at our website, rather than disseminating it to all licensees through surface mail, we propose to disseminate fee-assessment

(Continued from previous page)

101 of the Commission's Rules to Facilitate the Provision of Fixed And Mobile Broadband Access, Educational And Other Advanced Services in the 2150-2162 And 2500-2690 MHz Bands, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6797 (2003).

<sup>9</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15988 ¶ 9 (2003) (*FY 2003 Report and Order*).

<sup>10</sup> *Id.*

<sup>11</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15985 ¶ 21 (2003).

<sup>12</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eighth Report*, 18 FCC Rcd 14783 ¶ 141 (2003) (*Eighth Annual CMRS Competition Report*).

<sup>13</sup> See *FY 2003 Report and Order*, 18 FCC Rcd 15985 ¶ 21 (2003).

notifications to licensees in five categories through surface mail. We propose to notify the following five categories of licensees by surface mail because these licensees experienced confusion about fees and the fee-collection process in the past, or are likely to need to respond to changed collection practices in the future.

### **1. Media Services Licensees**

9. In FY2003, the Commission mailed fee assessment notifications to media services licensees for the first time.<sup>14</sup> We propose to repeat this endeavor this year in a similar fashion. At this time, we are unsure of the exact postcard or letter format for assessment notifications. However, regardless of format, the content of each assessment notification would identify each licensed facility by its facility identification number, station call sign, station type and class, regulatory fee amount owed, licensee contact information and licensee federal registration number.

10. We emphasize that media services licensees would still be required to complete the Remittance Advice FCC Form 159 when submitting their fee payment. Last year, many media services licensees erroneously submitted their fee payments with an attached copy of the assessment notification that they received, rather than a completed FCC Form 159. Many licensees also submitted their payment to FCC Headquarters in Washington, DC rather than to the Mellon Bank in Pittsburgh, PA. These mistakes resulted in the delayed processing of payments and hence some became subject to the Commission's 25 percent late-payment penalty. Therefore, on this year's fee assessment notifications, we propose to include a specific notice that payments submitted to the wrong address or submitted without an FCC Form 159 will likely incur a 25 percent late-payment penalty.

### **2. Satellite Space Station Licensees**

11. In FY 2003, the Commission mailed regulatory fee assessment letters for the first time to satellite space station licensees. We propose to repeat this endeavor this year in an identical or similar fashion. As with media services licensees, we reiterate that satellite space station licensees are still required to complete a Remittance Advice FCC Form 159 and submit their payment to the appropriate Mellon Bank Pittsburgh, PA mailing address.

### **3. Interstate Telecommunications Service Providers**

12. As in previous years, we propose to continue to generate and mail customized Interstate Telecommunications Service Provider Worksheets (FCC Form 159-W) to Interstate Telecommunications Service Providers ("ITSPs"). The customized FCC Form 159-W serves as a regulatory fee assessment for ITSPs. Recipients of the customized FCC Form 159-W would need only sign the form and submit it along with payment to the appropriate Mellon Bank Pittsburgh, PA mailing address, in lieu of the FCC Form 159. Recipients who disagree with the assessed fee amount or other information relating to the calculation of the assessment on their customized FCC Form 159-W would complete a blank FCC Form 159-W and complete a FCC Form 159, and then submit both of these forms along with payment to the appropriate Mellon Bank Pittsburgh, PA mailing address.

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<sup>14</sup> Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. We did not issue fee assessments for broadcast auxiliary stations in FY2003, nor will we do so this year.

#### 4. Cable Television System Operators

13. Beginning this year, we propose to modify our payment unit assessment methodology and our fee collection procedures for the cable industry by assessing regulatory fees for individual cable operators based on cable subscriber counts that the operators themselves have reported in publicly available data sources. The primary data sources we propose to reference this year are the *Broadcasting and Cable Yearbook 2003-2004* ("Yearbook")<sup>15</sup> and industry statistics publicized by the National Cable and Telecommunications Association ("NCTA").<sup>16</sup>

14. Under this methodology, cable operators and multiple system operators ("MSOs") would simply base their regulatory fee obligations upon their respective basic subscriber counts as reported in the data sources. Cable operators and MSOs would still be required to complete a Remittance Advice FCC Form 159 and submit their payment to the appropriate Mellon Bank Pittsburgh, PA mailing address; but they would only have to report their aggregate subscriber count on a single line entry on FCC Form 159, rather than report the counts for every community unit identifier ("CUID") that they serve.

15. In using the data sources, we propose that cable operators would first refer to NCTA's list of the 25 largest multiple-system operators ("MSOs"). Entities appearing on the list would base their fee obligations on their subscriber counts as reported on the list. MSOs and other cable operators not listed by NCTA next would refer to the *Yearbook* and base their fee obligations upon their aggregate system(s) basic subscriber counts as reported in the *Yearbook*. Any MSOs and operators not appearing on the NCTA list or in the *Yearbook* would then certify their aggregate basic subscriber counts as of December 31, 2003 on the Remittance Advice FCC Form 159 with the understanding that we would corroborate the certified counts with other publicly available data sources.<sup>17</sup> Cable operators that do not have access to the Internet to obtain the NCTA list or have access to the *Yearbook* would be able to contact the FCC Consumer Center at (888) 225-5322 to obtain their publicized subscriber count, if available in either data source.

16. Under this assessment methodology, the per-subscriber regulatory fee would be the same for all cable operators, regardless of company or system size, as is presently the case. Beginning this year, we would also set a *de minimis* payment exemption for operators serving less than 250 basic service subscribers throughout their entire system(s). Operators fitting into this category would not be required to submit payment, but would still be required to submit a Remittance Advice FCC Form 159 on which they certify their aggregate subscriber count.

17. We also note that beginning this year we propose to mail assessment letters to all of the MSOs and cable operators in the *Yearbook* or on the NCTA list of 25 largest MSOs. Operators not appearing in either data source would not receive an assessment; however, they would still expected to make a fee payment based on their certified basic cable subscriber counts.

18. Our proposed assessment methodology for the cable subscriber service category reduces administrative burdens for cable operators and the Commission. Each cable operator would only have to

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<sup>15</sup> *Broadcasting and Cable Yearbook 2003-2004*, by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Section C, "Multiple System Operators, Independent Owners and Cable Systems," page C-3.

<sup>16</sup> NCTA maintains an updated list of the 25 largest multiple-system operators at its web site located at <http://www.ncta.com>.

<sup>17</sup> Sources consulted by the Commission may include but not be limited to *Cable TV Investor* by Kagan World Media and *Television and Cable Factbook* by Warren Communications.

provide one payment line on FCC Form 159 rather than the dozens or even hundreds that currently must be provided by some of the larger MSOs when reporting subscriber counts for each CUID that they serve. This year's assessment model would also provide predictability for cable operators and the Commission. The precise fee obligations of cable operators and MSOs would be easily determined and would be known well in advance by both the regulatees and the Commission.

19. We solicit comment on the feasibility of this assessment proposal. Specifically, we seek comment regarding the accuracy of basic subscriber counts as furnished by NCTA and as reported in the *Yearbook* and other publicly available data sources. If the number of basic subscribers certified to be served by operators differs considerably with the numbers reported in publicly available data sources, we invite comment that would provide possible explanations for any such discrepancies. We also seek recommendations for alternative data sources that the Commission could consult with a high degree of reliability.

#### **5. Commercial Mobile Radio Service Operators**

20. Beginning this year, we propose to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information provided in the *Numbering Resource Utilization Forecast* (NRUF) report.<sup>18</sup> Data from the NRUF report would be used to determine the amount of each regulatory fee obligation, and assessments would be mailed accordingly to cellular and other mobile service providers. The providers would still be required to submit their payment with Remittance Advice FCC Form 159 to the designated address in Pittsburgh, PA. We solicit comment on the feasibility of this assessment proposal. Specifically, we seek comment regarding the use of NRUF data as it relates to the subscriber basis upon which wireless cellular/mobile regulatory fees are calculated. We also seek comment on other data sources that would be pertinent for us to consult for calculating wireless cellular/mobile regulatory fees.

21. With the exception of the changes noted in the preceding sections, we propose to retain the procedures that we have established for the payment of regulatory fees.<sup>19</sup>

#### **D. Future Streamlining of the Regulatory Fee Assessment and Collection Process**

22. As an agency, we are committed to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. We welcome comments on a broad range of options in this regard. As discussed briefly below, our areas of particular interest include: (1) the process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, i.e. through surface mail, email, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way. Commenters should bear in mind that proposed improvements must comport with the provisions of Section 9 of the Communications Act of 1934, as amended.<sup>20</sup>

<sup>18</sup> *Numbering Resource Utilization in the United States as of June 30, 2003*, prepared by the Industry Analysis and Technology Division, Federal Communications Commission (December 2003).

<sup>19</sup> See 47 U.S.C. § 159(f).

<sup>20</sup> See *id.* § 159.

23. With respect to disseminating assessments or bills through surface mail, we note that many licensees have multiple mailing addresses on file in the Commission's licensing databases and our Commission Registration System (CORES). We seek comment regarding to which address licensees would prefer to have bills or assessments mailed.

24. With respect to the fee payment process, we seek comment on migrating licensees to the Commission's electronic payment process known as Fee Filer, particularly in instances by which slow mail delivery may result in receiving the payment beyond the fee due date, thereby resulting in a 25 percent late-payment penalty. Should the Commission make use of Fee Filer mandatory for fees over a certain monetary level, or for licensees holding a certain number of licenses? For licensees who choose to continue to submit fee payments through surface mail to Mellon Bank in Pittsburgh, PA, we seek comment on ways to streamline the Remittance Advice Form 159. We also seek comment on ways in which we could employ information technology on the fee assessments or bills that we generate so as to enable licensees to submit their fee payments with a copy of their fee assessment or bill, in lieu of a Remittance Advice Form 159.

25. With respect to the current filing-fee window, we seek comment on whether the current time period for filing regulatory fee payments provides licensees with sufficient time to submit their filings to the Commission. In particular, we seek comment on the public benefits that might accrue from lengthening the time period for filing fee payments.

#### **E. Procedures for Payment of Regulatory Fees**

##### **1. De Minimis Fee Payment Liability**

26. As in the past, we propose that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 2003. Also, per the terms of the revised cable subscriber fee assessment methodology proposed above, cable television operators serving in the aggregate less than 250 basic service subscribers would be exempted from fee payment in the cable subscriber service category.

##### **2. Standard Fee Calculations and Payment Dates**

27. Consistent with past practice, the specific time for payment of standard fees will be announced in the *Report and Order* terminating this proceeding and will be published in the *Federal Register*. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

a) Media Services: The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due.

b) Wireline (Common Carrier) Services: Fees are not based on a subscriber, unit, or circuit count. Fees must be paid for any authorization issued on or before October 1, 2003.

c) Wireless Services: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of

five or ten-years and paid throughout the year.

d) Cable Services (fees based upon a subscriber count): To coincide with this year's proposed assessment methodology, the basic subscriber counts in NCTA's list of Top 25 MSO or in the *Broadcasting and Cable Yearbook 2003-2004* will be used as the basis from which to calculate the fee payment. For operators not on the NCTA list and not appearing in the *Yearbook*, the number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment.<sup>21</sup> CARS licensees: Fees must be paid for any authorization issued on or before October 1, 2003.

e) International Services: Earth stations, geostationary orbit space stations, international public fixed radio services and international broadcast stations: Payment is calculated per operational station. Non-geostationary orbit satellite systems: Payment is calculated per operational system. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due. International bearer circuits: Payment is calculated per active circuit as of December 31, 2003.

28. We strongly recommend that entities submitting more than twenty-five (25) Form 159-Cs use the electronic-fee-filer program when submitting their regulatory fee payment. We will accept fee payments made in advance of the normal formal window for the payment of regulatory fees for the convenience of payers.

#### F. Enforcement

29. Finally, as a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, A LATE PAYMENT PENALTY OF 25 PERCENT OF THE AMOUNT OF THE REQUIRED REGULATORY FEE WILL BE ASSESSED ON THE FIRST DAY FOLLOWING THE DEADLINE DATE FOR FILING OF THESE FEES. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and §1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner.

The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.<sup>22</sup>

<sup>21</sup> Cable system operators and MSOs that are not listed in any of the data sources indicated in this item are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2003, rather than on a count as of December 31, 2003.

<sup>22</sup> See 47 CFR § 1.1164.

### III. PROCEDURAL MATTERS

#### A. Comment Period and Procedures

30. Pursuant to 47 CFR §§1.415, 1.419, interested parties may file comments on or before April 21, 2004, and reply comments on or before April 30, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>23</sup>

31. Comments filed through the ECFS are sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must submit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

32. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be hand delivered or by messenger delivery, sent by commercial overnight courier, or mailed by first-class mail through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

33. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1-C848, Washington, D.C. 20554. These submissions must be in a Microsoft Windows<sup>TM</sup>-compatible format on a 3.5" floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 04-73), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

34. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY-A257, 445 12<sup>th</sup> Street, S.W., Washington, D. C. 20554, and through the Commission's Electronic Comment Filing System (ECFS)

<sup>23</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), available at <<http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf>>.

[http://www.gulfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://www.gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi). Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

## B. Ex Parte Rules

35. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.<sup>24</sup>

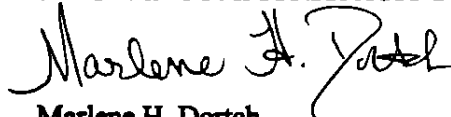
## C. Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act,<sup>25</sup> we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

## D. Authority and Further Information

37. Authority for this proceeding is contained in §§ 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.<sup>26</sup> It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. Further information about this proceeding may be obtained by contacting the FCC Consumer Center at (888) 225-5322.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

<sup>24</sup> 47 C.F.R. §§ 1.1203 and 1.1206(b).

<sup>25</sup> See 5 U.S.C. § 603.

<sup>26</sup> 47 U.S.C. §§154(i)-(j), 159, & 303(r).